confined to writs in the second or subsequent degrees.

On inquiry I find that no Register of Crown Suits is kept or has been kept in Singapore for many years under section 17(4). I can get no information as to when such a book was last kept. An officer of the Registry of Deeds who has been there for twenty six years remembers no such book.

The procedure for enforcing writs of *fieri facias* against lands in 1876 was governed by Indian Act *VI* of 1855. The land could be seized and sold by the Sheriff who could put the purchaser into possession. It appears to me that the purpose of the notice under section 17 (3) of the commencement of the suit was to serve as a kind of caveat to protect the Crown and that the notice of the writ of extent was to strengthen that caveat.

Then came the Civil Procedure Code of 1878 under sections 364 and 365 of which the writ was to be registered in a book to be kept by the Registrar called the "Executions against Land Book." Such registration was to remain in force for six months but could be renewed.

The Registration had the effect of making the judgment a charge on the land.

The writ of execution itself called upon the judgment debtor to appear before the Supreme Court on a day named in the writ and then to be examined respecting his title and interest in the lands particulars of which were indorsed on the writ, in order that the same may be sold. The writ of execution against lands therefore became in 1878 not a writ of seizure actual or constructive but a kind of combined charge on land and Judgment debtor summons.

This was followed by section 619 of the Civil Procedure Code of 1907 replaced by Order XLI.

This history of procedure in civil cases is merely useful as indicating that as ordinary civil procedure became more effective, the special provision necessary to protect the Crown in 1876 became less and less necessary, and in my opinion in any Settlement where the Registration of Deeds Ordinance (Chapter 121) is in force it is not incumbent upon the Crown to comply with section 17 (3) and (4) in the case of a writ on final process if the procedure prescribed in Order XLI, rule 1 has been followed.

I think it probable that the procedure of enforcing such writs as the writ in this case was, by virtue of sections 43 (3) and 52 assimilated to the ordinary civil procedure when such procedure was provided for by local legislation and having regard to what has been long settled practice the procedure adopted in this case must be regarded as being valid and the writ of extent and sale on final process must, when the Order referred to in Order XLI, rule 1 has been registered, be regarded as an executed writ which requires no renewal.

The Solicitor-General's argument that section 50 of the Crown Suits Ordinance only applies to executed writs is correct.

I therefore make an order that the objection of Tan Khuat Siong in respect of the above mentioned contract of sale has been sufficiently answered.

Order accordingly.

Solicitors for the applicant—*Donaldson & Burkinshaw.*

Solicitor for the Attorney-General and Sheriff—*Solicitor-General; S.S.*

[COURT OF CRIMINAL APPEAL]

McELWAINE, C.J., TERRELL & HORNE, JJ.

March 2, 1938.

K. OHKI AND ORS. v. REX.

[SINGAPORE CRIMINAL APPEAL No. 1 of 1938]

Criminal Law—trafficking in counterfeit notes—Penal Code, S. 489—B.

The word "traffic" in section 489-B of the Penal Code includes any act done in connection with, and directly leading up to, a passing of forged notes, whether the passing is effected or not.

CRIMINAL APPEAL.

The first and second appellants were tried before Mr. Justice Gordon Smith and a Common Jury on a charge under Section 489-B of the Penal Code (Trafficking in counterfeit notes) and were convicted.

The charge read as follows:—

> On or about the 24th August, 1937, at the Tong Lok Hotel, Burma Road, Penang, did traffic in counterfeit notes, namely, by producing 488 counterfeit Straits Settlements ten-dollar currency notes for sale to a male Chinese known to you as Lee Siew of Ipoh but known to the Police of Penang as Asiatic Inspector Kay, which said currency notes were known to you to be counterfeit. Section 498-B Penal Code.

From this conviction the 1st and 2nd appellants appealed to the Court of Criminal Appeal.

Chidson for 1st Appellant.

Mundell for 2nd Appellant.

Howe, Crown Counsel, for the Crown.

The facts and arguments sufficiently appear from the judgment of the Court of Criminal Appeal (**McELWAINE, C.J., TERRELL AND HORNE, JJ.**)

Cur. Ad. Vult.

The judgment of the Court was as follows:—

This case has been very fully and exhaustively argued by Mr. Chidson and by Mr. Mundell and every point has been brought to our notice.

We think there is no substance in the objection taken to the interpretation in Kichi Yoshi Ohki's appeal. The ground of objection is that for the first four days of the trial the interpretation was inefficient in that the interpreter was not sufficiently skilful and also suffered from a slight deafness. In view, however, of the cross-examination which Ohki

effected and the manner in which he gave his own evidence in chief, it does not appear that he was in the least embarrassed by the interpreter. The Interpreter complained of was a Japanese, and was used also in the preliminary inquiry, where of course, the evidence is recorded in narrative form, but no objection to the interpretation appears on the depositions. On the trial record, where every question and answer is given verbatim, a number of queries as to the interpretation do appear. The greater number of these queries occur, however, after a new Japanese interpreter, who had no previous knowledge of the case, was brought in, and are largely due to the difficult form of the questions put in cross-examination. There is no suggestion of variability on the part of either interpreter, and, as inefficiency is not established, we can find no ground here for interfering with the verdict. It has also been suggested that Ohki was prejudiced in making his defence by not receiving a copy of the depositions until the day of trial, although this accused had made an application therefor on committal. There is no question that under section 450 (2) of the Criminal Procedure Code an accused ought to be supplied with a copy free of charge, but whether, as they were in the English language they would have been of great value to him is, in this case, doubtful. In any event, it is apparent from the way he conducted his defence and the line that defence took, he was not prejudiced by the late delivery of the copy of the depositions. We also think that no exception can be taken to the charge under section 489-B.

Mr. Chidson argued (and Mr. Mundell associated himself with the argument) that to produce notes for sale is not trafficking, and that actual transfer must be alleged. He referred to *Maxwell* on Interpretation of Statutes, 7th edition, 284:—

> "The general word which follows particular and specific words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus,"

that the opening words of the section implied actual transfer and that therefore traffic included actual transfer. The words "or otherwise traffics in or uses" enlarge the scope of the preceding words. "If it can be seen from a wider inspection of the scope of the legislation that the general words, notwithstanding that they follow particular words are nevertheless to be construed generally, effect must be given to the intention of the Legislature as gathered from the larger survey." *Maxwell*, p. 289.

"Traffics" includes any act done in connection with and directly leading up to a passing of forged notes whether the passing is effected or not.

Reward is not an essential element in the offence. The words "or receives" following the word "buys" negatives such an implication.

Although the question of the guilt or otherwise of the first accused was left to the jury, this accused's evidence raised no defence in law, and taken by itself, even if one disregarded the strong evidence for the prosecution, was sufficient to prove the Crown's case against him.

The principal ground of appeal of the second accused is that his defence was not put fairly to the jury. Mr. Mundell submitted that if the summing up is regarded as a whole, then. in the light of certain remarks made by the learned trial Judge before the speeches of counsel, the Judge must be said to have directed the jury to convict No. 1, No. 2 and No. 4 accused and acquit No. 3 accused. Without doubt, the Judge expressed a strong opinion upon the value of the defence of No. 1, No. 2 and No. 4, but it was not such as cannot be justified having regard to the evidence adduced by these accused respectively.

No. 1 and No. 4 certainly had no defence at all. Their own evidence upon oath admitted that they were in fact trafficking.

There are, however, certain passages in the summing up, where the learned trial Judge is dealing with the defence of No. 2 accused which have been called in question; and it is submitted thereon that the learned trial Judge has put to the Jury, not the defence of this appellant (accused No. 2), but only the evidence in rebuttal of it given by the Crown witness.

This appellant's defence was that he was brought into this proposed deal in currency notes through a deceit practised upon him by No. 1. There is only his evidence of this alleged deceit, and upon examination it does not seem reasonable to believe that No. 1 would have brought No. 2 from Betong or that No. 2 would have come from Betong merely to identify Lim Soon Lee as a safe person to sell scrap iron. Then having been brought there to the hotel, and having discovered it was a deal in currency notes, he proposed to have nothing to do with it, and expressing his fears to him, Soon Lee, the latter informed him that the prospective buyer was a police officer and threatened him that if he did not carry on with the deal he would be in difficulty with the police; and that he then and there decided to help the police.

It cannot be said that his defence was not brought to the jury. It was brought in much the same words as we have set it out above. But the learned trial Judge added:—

> "but there is not a jot or tittle of evidence of having assisted the police. In fact all the afternoon it was he who was against the delivery of the notes at the Hotel, and it was not until No. 1 had gone to

find him or to find somebody and had come back to the hotel and said the notes were coming that Inspector Kay knew the notes were coming to the Hotel."

There is inaccuracy in stating the evidence at that point, but the learned trial Judge continues:—

"Until No. 1 came back at 4.10 p.m. the last interview with No. 2 showed that he appeared to be annoyed because Inspector Kay would not agree to delivery outside the hotel and yet he says he was assisting the police, but he never disclosed that fact to the police. He says he knew Inspector Kay was an Inspector of Police. Can you believe his walking into a trap and all the time knew Inspector Kay was an Inspector of Police and he never says a word to the police at all?.. ....and then he says he was frightened and a great deal has been made of the fact that it was in the morning when Lim Soon Lee followed him into (the room) and had a conversation at the top of the stairs."

The learned Judge then put the evidence of Lim Soon Lee to the Jury as to his conversation including that witness' cross-examination by No. 2's counsel in the course of which Lim Soon Lee declared that he did not disclose to No. 2 that they were going to catch the Japanese, i.e. No. 1. Then came the following expression which has been objected to "And it is on that evidence that it was submitted that No. 2 was frightened into lending a hand to Lim Soon Lee."

In our opinion the defence of this appellant was clearly left to the jury. No matter what criticism may be passed upon the strength of the learned Judge's remarks, it cannot be said that the appellant lost whatever chance he had upon the evidence of being acquitted.

The question as to how far a Judge may go in expressing an opinion on facts was dealt with in *Cohen* v. *Bateman*, 2 Cr.A.R., 197 at p. 207. The accused in that case had each tried to throw the blame on each other, much as No. 2 was doing in this case. Channell J. delivering the considered Judgment of the Court said "It is not wrong for the Judge to give confident opinions upon questions of fact. It is impossible for him to deal with doubtful points of fact unless he can state some of the facts confidently to the Jury. It is necessary for him sometimes to express extremely confident opinions. The mere finding therefore, of very confident opinions in summing up does not show that it is an improper one. When one is considering the effect of a summing up, one must give credit to the Jury for intelligence and for the knowledge that they are not bound by the expressions of the Judge upon questions of fact." Both at the commencement and at the conclusion of the summing up the learned trial Judge clearly and forcibly stated to the Jury that they were not bound by his opinion.

However, this defence was most forcibly presented to the Jury by the appellant's counsel. The keystone of that defence is the alleged disclosure of the trap to the appellant (Accused No. 2) by Lim Soon Lee. Every possible reason for the acceptance of the appellant's evidence in preference to that of Lim Soon Lee as to this disclosure was urged by counsel for the appellant at the trial.

Not only was the appellant's allegation put by the Judge, it was also put by his own counsel and treated exhaustively by the latter. It does not appear therefore that the Judge only put the evidence for the prosecution on this point to the jury. He made a specific reference to this evidence in his summing up, and the fact that he referred to Lim Soon Lee's evidence at greater length was not unfair to the appellant. Even if there had been an omission to deal with the evidence of the appellant in the summing up, the defect would not affect the result of the trial, and we should say, as was said in *Beecham* v. *Rex*, (1921) 3 K.B. at page 470 that "We shall be satisfied that the evidence in question had been forcibly called to the attention of the jury by counsel for the defence and that it could not have been absent from their minds when they considered their verdict."

Accused No. 2, whose appeal this part of our judgment deals with, was ably represented and the substance of his complaint against the summing up apparently is that the learned trial Judge did not put the counsel's argument over again. But as was said in *Stoddart's* case and quoted in *Immer's* case, 13 Cr.A.R., 24:—

"It is no misdirection not to tell the Jury everything which might have been told them. .....Every summing up must be regarded in the light of the conduct of the trial and the questions which have been raised by the counsel for the prosecution and defence respectively. This Court does not sit to consider whether this or that phrase was the best that might have been chosen, but to deal with valid objections to matters which might have led to a miscarriage of justice."

In this case, after an exhaustive examination of all the evidence we are of opinion that neither the appellant's conduct prior to his first coming to the hotel nor his conduct subsequent thereto lends any credence to his allegation that the trap had been disclosed to him, and we think that although the summing up might have been phrased differently, yet, considered as a whole, in the light of the conduct of the trial, the defence of the appellant was fairly left to the jury.

The appeals of both appellants are dismissed.

Appeal dismissed.